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House Environmental Regulation

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AUSTIN (03/17/15, E1.026, 8:00 A.M.)

The House Environmental Regulation Committee came to order this morning at 8:09.

HB 1794 By Geren, Charlie. Relating to maximum penalties for certain environmental violations. - left pending.

(8:10) Rep. Geren said H.B. 1794 would clarify the process on how local governments bring lawsuits in conjunction with the TCEQ against polluters. He offered a substitute to address concerns about the original version and now had "the perfect bill." The substitute would strike a mens rea standard for assessing penalties, revise civil penalties from \$50 to \$25,000 per day for violations, cap total penalties at \$4.3 million, and establish a statute of limitation on violations. Geren said the bill would encourage self-reporting and compliance by property owners, and would not threaten TCEQ enforcement efforts nor restrict local governments from taking action against polluters.

(8:15) George Christian of the Texas Civil Justice League testified for the bill and agreed that the substitute was indeed the perfect bill after being heavily negotiated. The substitute would retain a strict liability standard and would allow for stacking civil penalties on multiple violations at a site. Christian said there are many legacy pollution problems where property with environmental problems changes hands. The bill would allow new property owners "to do the right thing and not get hammered with a big lawsuit."

(8:22) Jackie Young of the San Jacinto River Coalition testified against the bill. Young said beginning in 1965, more than 100,000 tons of dioxin was dumped in the San Jacinto Waste Pits near the Highland neighbor. In 1990, the Texas Parks and Wildlife Department issued a warning about consuming fish from the San Jacinto River and upper Galveston Bay because the high level of the dioxin found in the waterways. Residents used the abandoned and buried pits as a recreation area for many years. One resident, who used to have mud fights at the area, died at the age of 24 from a rare form of cancer linked to dioxin exposure. Ten residents have died of rare cancers, she said. Her father has a rare form of eye cancer, and she has been also diagnosed with a cancer of her reproductive organs. The new property owners have been sued by Harris County and the TCEQ, but nothing has been cleaned up. Young said the proposed bill would show that "Texas gives a hall pass to polluters."

(8:26) Steve Hupp of Bayou Preservation Association testified against the bill and said it would handicap the ability of local government so clear up waterways.

(8:31) Cathy Sisk, who retired from the Harris County Office of Legislative Relations, testified against the bill. Sisk noted that TCEQ is included as a necessary party in suits brought by local governments, but reverse is not true to allow local governments to join in TCEQ legal proceedings. Harris County is among six to eight other counties which have been active in filing suits against polluters, and its efforts date from the 1950s. An analysis of the last 19 years shows more than 18,000 alleged violations in Harris County. However, the county has brought civil action in 205 cases, or about 10 a year, she said. Sisk noted that the county will typically seek the maximum allowed under the statutes, which could be



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millions of dollars, but as a matter of practice, the actual damages range to much less and are determined by juries. Harris County reaches agreement in 92 percent of the cases. In cases of serious harm, recalcitrant parties, and egregious violations, "we need a hammer, " Sisk said. Civil penalties are split equally between TCEQ and the local government.

(8:41) Harris County Commissioner R. Jack Cagle opened his testimony against the bill by recalling his Latin classes in high school. He remembered being taught not only the perfect but the future perfect, and commented that Rep. Geren's proposed substitute would not make it really perfect. Cagle said he favored local control, opposed constraining Harris County's approach to environmental regulation, and maintaining a balance of being commerce friendly in the county.

(8:48) Cagle also remembered crabbing in the San Jacinto, even though he now feared "that those crabs will come back to bite me - literally."

(8:51) Rep. Lorenzo asked whether Harris County contracted with attorneys in the San Jacinto Waste Pit litigation on an hourly or contingency basis. Cagle said typically the county uses its own attorneys or pays outside counsel hourly rates. The county decided to use a contingency approach for the waste pit case because of the complexity of the litigation.

(9:02) Sam Braum of the San Jacinto River Coalition testified against the bill. Braum remembered water skiing in the waterway, and said he was diagnosed with myeloma, a cancer linked to dioxin exposure, in 2005. The disease affects 6 out of 100,000 people, but the Highlands area has seen 10 deaths from the illness.

(9:05) Donald Lee of the Texas Conference of Urban Counties testified against the bill.

(9:10) Bryan Blevins of the Texas Trial Lawyers Association testified on the bill. Blevins said the group changed its original position of being opposed because the substitute would keep the strict liability standards, allow stacking of civil penalties, and not make the provisions retroactive.

(9:26) John Odom of the Harris County Attorney's Office testified against the bill.

(9:29) Ryan Fite of Austin testified against the bill. Fite said his experience in the Travis County Attorney's Office makes him concerned that the bill would jeopardize the delegation of authority from the EPA to the state or local governments if civil penalties were eliminated. Fite said the state could risk having the EPA, rather than TCEQ, issue permits or losing federal highway funding.

In response to questioning from Rep. Phil King, Fite made the distinction between civil penalties addressed in the bill and damages. He said the larger actors can pay the penalties, such as \$50 billion paid to the state by BP, but counties typically cannot collect from polluters such as those cited for violations of septic systems.

(9:39) Christina Wisdom of the Texas Association of Manufacturers testified in favor of the bill and disagreed with Fite's testimony about delegation problems. She called the objection "a red herring," and said the intent is only to prevent "doubling dipping" by the state and local governments.

(9:45) Tom "Smitty" Smith of Public Citizen testified against the bill and said it remained a bad bill despite the proposed changes. Smith said only the local government has "had the guts" to stand up for Texans, and the TCEQ has been a "toothless tiger." He noted that the kind of litigation used by Harris County is not a commonly used tool, "it is a sharp tool."

Smith said he opposed the statute of limitation because environmental effects of chemical dumping and spills are not obvious until years later, such as when clusters of cancers occur.

(9:50) Cyrus Reed of the Lone Star Chapter of the Sierra Club testified against the bill. Reed said his group litigates on delegation issues, but he has not heard from their lawyers on how the bill would affect the interaction of state and federal environmental regulation.

The committee recessed at 9:56, and reconvened at 11:40.

(11:41)

HB 1269 By Springer, Drew. Relating to supplemental environmental projects implemented by certain local governments in lieu of administrative penalties assessed by the Texas Commission on Environmental Quality. - left pending.

Rep. Springer said H.B. 1269 would allow counties with a population of less than 50,000 to ask TCEQ to apply any fines for environmental violations to community projects, such as repairs to wastewater facilities or fixing water main leaks.

(11:45) Bryan Grimes, Ballinger City Manager, testified for the bill and said a TCEQ fine can be \$25,000 to \$30,000, which is a significant portion of a smaller city's budget. He said the money could be directed to making the payment on the backhoe needed to correct the water leak or other problem.

(11:48) Rep. Springer gave an example in Shamrock where the city had to lay off one of its three police officers to have enough to pay a TCEQ fine. "Imagine laying off one-third of your police department to pay a fine."

(11:50)

HB 281 By Simmons. Relating to a limitation on the expansion of certain landfills. - left pending.

Rep. Simmons said H.B. 281 would address a quirk in the law where a city and its citizens located near a landfill cannot effectively comment on the TCEQ permitting process. Simmons said Farmers Branch received a permit to build the Camelot landfill in what was then rural portions of Denton County. The bill addresses this unique situation where one city owns the landfill located in another city (Lewisville) and is within 600 feet of a third city (Carrollton). A proposed permit would allow for expansion of the landfill to 200 feet tall, and make it the highest point in Denton County.

Rep. Simmons said he would offer a substitute to bracket the bill for cities of 600,000.

(11:56) Farmers Branch Councilman Harold Froehlich testified against the bill. Froehlich said Lewisville annexed the landfill in 1986. Carrollton originally had light industrial zoning for the area near the landfill, but changed it to residential zoning in 1996. Farmers Branch received a permit two years ago, but the process had been delayed by a federal lawsuit filed by Lewisville. That suit had been resolved recently.

(12:06) Steve Carr of Republic Services, which manages the landfill, testified against the bill. He said a unique situation should not be addressed in statewide legislation because of the potential make TCEQ regulation "ineffective and redundant."

(12:10) Stephen Minik of the Texas Association of Business testified against the bill. Minik said TAB is taking a position in what seems like a local issue because it could have statewide implications. "We cannot undo land use, zoning, and annex decisions, but we need to draw a line between state authority and local authority." He noted that any bracket could be removed and could make the bill apply elsewhere in the state.

(12:15) Scott Hudson, Carrollton Director of Environmental Services, testified in favor of the bill because it would ensure an effective voice for those affected by the TCEQ permitting process.

(12:19) Carrollton City Councilmember Jeff Andonian testified for the bill, but said he is not "looking for the perfect bill and I don't speak Latin." However, he compared H.B. 281 to a "good ordinance" that would preserve neighborly relations. He noted that one lawsuit has been filed against the landfill because its clay liner failed and polluted the Elm Fork of the Trinity River. Andonian said he recognizes the need for landfills, but he supports having a fair process.

(12:22) Lewisville Deputy Mayor Pro Temp Neal Ferguson testified in favor of the bill. Ferguson said the Texas Department of Transportation took into account local input in designing changes to Interstate 35 through the city. He contrasted that to a TCEQ hearing where more than 500 attendees were told that their comments beyond technical or scientific issues "would be of no consequences."

(12:29) Arden Vance Kemler of the Lone Star Chapter of the Solid Waste Association of North America testified against the bill. He said landfills are already highly regulated, and the bill could lead to cities vetoing TCEQ permits.

(12:31) Robin Schneider of the Texas Campaign for the Environment testified for the bill and said it does not address only a local issue. Since the mid-1980s, landfills have been subject to strict federal standards. While the number of landfills in Texas has decreased, their overall capacity has increased. The average size has increased from 50 acres in 1986 to 240 acres now. The trend is to build up and create " monster landfills," she said.

(12:39) Bryon Friedrich of Lockhart testified for the bill. Friedrich said he was interested in the North Central Texas bill because his county will become the site of a large landfill. He said local governments are too weak to prevent state agencies from imposing unwanted policies on citizens, particularly in rural areas. "What a deal - we give up our water and we get the garbage and traffic congestion."

(12:47) Chris Macomb of Texas Waste Management testified for the bill.

(12:49) Former Rep. Burt Solomons, representing the City of Lewisville, testified for the bill. Solomons said he wanted to ensure that TCEQ would consider other factors than just scientific and technical testimony. During his time in the legislature, he worked with the Sunset Review process to see that state agencies more closely relate to the interests of the public.

(1:00)

HB 1284 By Simmons, Ron. Relating to the review by certain governmental entities of a permit application for a solid waste facility. - left pending.

Rep. Simmons said H.B. 1284 would be a statewide measure that would clarify what TCEQ would consider as part of the landfill permit process. He said he would offer a committee substitute to limit the bill to municipal rather than industrial landfills.

(1:03) Stephen Minik of TAB testified against the bill. Minik said he wanted to correct a misconception about what comments TCEQ can consider. The agency has statutory limits on considering such factors as property values, but the staff has to respond to all comments.

(1:05) Steve Carr of Republic Services testified against the bill.

(1:06) Scott Hudson, Carrollton Director of Environmental Services, testified in favor of the bill. Hudson said it would give a "clear voice " to communities, and would not create a precedent to deny a permit in advance.

(1:10) Carrollton City Councilmember Jeff Andonian testified for the bill. Andonian said the current hearing process is frustrating and a substantial number left the TCEQ hearing because it would not be recorded.

(1:27)

HB 1146 By Kacal, Kyle. Relating to persons who may operate a public water supply system. - left pending.

Rep. Kacal said H.B. 1146 would allow public water utility systems to use volunteer, rather than paid, members. The volunteers would have to be licensed, and the utility would be required to maintain records and rosters of those volunteers.

The committee adjourned at 1:32 P.M.

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